

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR  
-----

CIVIL WRIT No. 2510 of 2006

SOHAN LAL KAWAD & ANR.

V/S

A.D.J. (FAST TRACK) NO.3, JODHPUR & ORS.

Mr. JITENDRA CHOPRA, for the appellant / petitioner

Mr. BK THANVI, for the respondent

Date of Order : 9.7.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

-----

Heard learned counsel for the petitioner, perused the impugned order.

The learned trial Court has dismissed the application for amendment on the ground that counter-claim cannot be permitted to raise when the cause of action for amended counter-claim arose after date of filing of written-statement, or after date of raising of first counter-claim.

In my view, this is one aspect of the matter. The other important aspect of the matter is that in the original written-statement itself, the defendant had raised a counter-claim without payment of Court fees, and in that matter, challenged the liability of the petitioner to pay Court fees, and this Court vide order dated 10.9.2003 upheld the order of the learned trial Court, and upheld the liability of the petitioner to make payment of the Court

fees. Admittedly, the Court fees has not been paid in pursuance thereto. In that view of the matter, when the original counter-claim itself has been lost for non-payment of Court fees, the petitioner cannot be allowed to raise this additional counter-claim by way of amendment. It is a different story that the respondent contends that in reply to the application filed under Order 6 Rule 5, the plaintiff had clearly given out to be ready to perform the contract, and it is much thereafter that the defendant has sold the plots. Be that as it may.

Considering the totality of circumstances, I am not inclined to interfere with the impugned order. The writ petition is, therefore, dismissed summarily. However, it is kept open to the petitioner to assail the correctness, legality, or propriety of the impugned order by setting forth appropriate ground in appeal, if necessity so arises, and if the petitioner so stands advised.

( N P GUPTA ), J.

/tarun/